

Comptroller of the Currency, Treasury

§ 28.12

Agreement corporation, that includes only international banking facility time deposits and extensions of credit.

(s) *Large United States business* means any business entity including a corporation, company, partnership, sole proprietorship, association, foundation or trust that is organized under the laws of the United States or any state thereof, and has:

(1) Securities registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; or

(2) More than \$1 million in annual gross revenues for the fiscal year immediately preceding the year of the initial deposit.

(t) *Limited Federal branch* means a Federal branch that, pursuant to an agreement between the parent foreign bank and the FRB, may receive only those deposits permissible for an Edge corporation to receive.

(u) *Managed or controlled* by a Federal branch or agency means that a majority of the responsibility for business decisions, including decisions with regard to lending, asset management, funding, or liability management, or the responsibility for recordkeeping of assets or liabilities for a non-United States office, resides at the Federal branch or agency. For purposes of this definition, forwarding data or information of offshore operations gathered or compiled by the United States office in the normal course of business to the parent foreign bank does not constitute recordkeeping.

(v) *Manual* means the Comptroller's Corporate Manual (see 12 CFR 5.2(c)).

(w) *Parent foreign bank senior management* means individuals at the executive level of the parent foreign bank who are responsible for supervising and authorizing activities of the Federal branch or agency.

(x) *Person* means an individual or a corporation, government, partnership, association, or any other entity.

(y) *State* means any state of the United States and the District of Columbia.

(z) *United States bank* means a bank organized under the laws of the United States or any state.

[61 FR 19532, May 2, 1996, as amended at 61 FR 60387, Nov. 27, 1996]

§ 28.12 Approval of a Federal branch or agency.

(a) *Approval requirements.* A foreign bank shall submit an application to and obtain prior approval from the OCC before it:

(1) Establishes a Federal branch, Federal agency, or limited Federal branch; or

(2) Exercises fiduciary powers at a Federal branch. (A foreign bank may submit an application to exercise fiduciary powers at the time of filing an application for a Federal branch or at any subsequent date.)

(b) *Standards for approval.* Generally, in reviewing an application by a foreign bank to establish a Federal branch or agency, the OCC considers:

(1) The financial and managerial resources and future prospects of the applicant foreign bank and the Federal branch or agency;

(2) Whether the foreign bank has furnished to the OCC the information the OCC requires to assess the application adequately, and provided the OCC with adequate assurances that information will be made available to the OCC on the operations or activities of the foreign bank or any of its affiliates that the OCC deems necessary to determine and enforce compliance with the IBA and other applicable Federal banking statutes;

(3) Whether the foreign bank and its United States affiliates are in compliance with applicable United States law;

(4) The convenience and needs of the community to be served and the effects of the proposal on competition in the domestic and foreign commerce of the United States;

(5) Whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(6) Whether the home country supervisor has consented to the proposed establishment of the Federal branch or agency.

(c) *Comprehensive supervision or regulation on a consolidated basis.* In determining whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis, the OCC reviews various factors, including whether the foreign bank is supervised or regulated in a manner so that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank to assess the foreign bank's overall financial condition and compliance with laws and regulations as specified in the FRB's Regulation K, 12 CFR 211.24.

(d) *Conditions on approval.* The OCC may impose conditions on its approval including a condition permitting future termination of activities based on the inability of the foreign bank to provide information on its activities, or those of its affiliate, that the OCC deems necessary to determine and enforce compliance with United States banking laws.

(e) *Expedited review.* Unless the OCC concludes that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues, the OCC generally processes the following filings by an eligible foreign bank, as defined in paragraph (f) of this section, under expedited review procedures:

(1) *Intrastate relocations.* An application submitted by an eligible foreign bank to relocate a Federal branch or agency within a state is deemed approved by the OCC as of the seventh day after the close of the applicable public comment period in 12 CFR part 5, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

(2) *Change of status.* An application to change the status of an office submitted by an eligible foreign bank is deemed approved by the OCC 45 days after filing with the OCC, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

(3) *Fiduciary powers.* An application submitted by an eligible foreign bank to exercise fiduciary powers at an established Federal branch is deemed approved by the OCC 30 days after filing with the OCC, unless the OCC notifies

the bank prior to that date that the filing is not eligible for expedited review.

(4) *Other filings.* Any other application submitted by an eligible foreign bank may be approved by the OCC on an expedited basis as described in the Manual.

(f) *Eligible foreign bank.* For purposes of this section, a foreign bank is an eligible foreign bank if each Federal branch and agency of the foreign bank in the United States:

(1) Has a composite rating of 1 or 2 under the interagency rating system for United States branches and agencies of foreign banks;

(2) Is not subject to a cease and desist order, consent order, formal written agreement, Prompt Corrective Action directive (see 12 CFR part 6) or, if subject to such order, agreement, or directive, is informed in writing by the OCC that the Federal branch or agency may be treated as an "eligible foreign bank" for purposes of this section; and

(3) Has, if applicable, a Community Reinvestment Act (CRA), 12 U.S.C. 2906, rating of "Outstanding" or "Satisfactory".

(g) *After-the-fact approval.* Unless otherwise provided by the OCC, a foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an office in the United States, may proceed with the transaction before an application to establish the Federal branch or agency has been filed or acted upon, if the applicant:

(1) Gives the OCC reasonable advance notice of the proposed acquisition, merger, or consolidation;

(2) Prior to consummation of the acquisition, merger, or consolidation, commits in writing to comply with the OCC application procedures within a reasonable period of time, or has already submitted an application; and

(3) Commits in writing to abide by the OCC's decision on the application, including a decision to terminate activities of the Federal branch or agency.

(h) *Procedures for approval.* A foreign bank shall file an application for approval pursuant to this section in accordance with 12 CFR part 5 and the Manual.

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(i) Additional requirements. Nothing in this section relieves a foreign bank of any requirement to obtain the approval of the FRB as may be necessary under the FRB's Regulation K, 12 CFR part 211.

§ 28.13 Permissible activities.

(a) *Applicability of laws*—(1) *General*. Except as otherwise provided by the IBA, other Federal laws or regulations, or otherwise determined by the OCC, the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location.

(2) *Parent foreign bank senior management approval*. Unless otherwise provided by the OCC, any provision in law, regulation, policy, or procedure that requires a national bank to obtain the approval of its board of directors will be deemed to require a Federal branch or agency to obtain the approval of parent foreign bank senior management.

(b) *Management of shell branches*—(1) *Federal branches and agencies*. A Federal branch or agency of a foreign bank shall not manage, through an office of the foreign bank that is located outside the United States and that is managed or controlled by that Federal branch or agency, any type of activity that a United States bank is not permitted to manage at any branch or subsidiary of the United States bank that is located outside the United States.

(2) *Activities managed in foreign branches or subsidiaries of United States banks*. The types of activities referred to in paragraph (b)(1) of this section include the types of activities authorized to a United States bank by state or Federal charters, regulations issued by chartering or regulatory authorities, and other United States banking laws. However, United States procedural or quantitative requirements that may be applicable to the conduct of those activities by United States banks do not apply.

(c) *Additional guidance regarding permissible activities*. For purposes of sec-

tion 7(h) of the IBA, 12 U.S.C. 3105(h), the OCC may issue opinions, interpretations, or rulings regarding permissible activities of Federal branches.

§ 28.14 Limitations based upon capital of a foreign bank.

(a) *General*. Any limitation or restriction based upon the capital of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital of the foreign bank.

(b) *Calculation*. Unless otherwise provided by the OCC, a foreign bank must calculate its capital in a manner consistent with 12 CFR part 3, for purposes of this section.

(c) *Aggregation*. The foreign bank shall aggregate business transacted by all Federal branches and agencies with the business transacted by all state branches and state agencies controlled by the foreign bank in determining its compliance with limitations based upon the capital of the foreign bank. The foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance.

§ 28.15 Capital equivalency deposits.

(a) *Capital equivalency deposits*—(1) *General*. For purposes of section 4(g) of the IBA, 12 U.S.C. 3102(g), unless otherwise provided by the OCC, a foreign bank's capital equivalency deposits (CED) must consist of:

(i) Investment securities eligible for investment by national banks;

(ii) United States dollar deposits payable in the United States, other than certificates of deposit;

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument; or

(iv) Other assets permitted by the OCC to qualify as CED.

(2) *Legal requirements*. The agreement with the depository bank to hold the